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9
10 Attorneys for Plaintiff

11 ELIZABETH WATERMAN

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 ELIZABETH WATERMAN,

16 Plaintiff,

17 v.

18 TIKTOK INC.,

19
20 Defendant.

Civil Action No. 2:24-cv-04802-AB-AJR

FIRST AMENDED COMPLAINT

1 Plaintiff Elizabeth Waterman (“Plaintiff”) sues TikTok, Inc. (“Defendant”),
2 and alleges as follows:

3
4 **THE PARTIES**

5 1. Plaintiff is an individual who is a citizen of the State of California
6 residing in the State of California.

7 2. Defendant is a corporation organized and existing under the laws of
8 the State of California with its principal place of business located at 5800 Bristol
9 Parkway, Suite 100, Culver City, CA 90230. Defendant’s agent for service of
10 process is 1505 Corporation CSC – LAWYERS INCORPORATING SERVICE,
11 2710 Gateway Oaks Drive, Sacramento, CA 95833.
12

13
14 **JURISDICTION AND VENUE**

15 3. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. §§ 1331 and 1338(a).

17 4. This Court has personal jurisdiction over Defendant because it
18 maintained sufficient minimum contacts with this State such that the exercise of
19 personal jurisdiction over it would not offend traditional notions of fair play and
20 substantial justice.
21

22 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)
23 because Defendant or its agents reside or may be found in this district. “The Ninth
24 Circuit has interpreted Section 1400(a) to mean that venue is proper in any judicial
25

1 district in which the defendant would be amenable to personal
2 jurisdiction.” Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-
3 LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing Brayton
4 Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010)).
5 Venue is thus proper in this District because personal jurisdiction exists over
6 Defendant in this District.
7

8 FACTS

9 **I. Plaintiff’s Business**

10 6. Plaintiff is an accomplished American photographer and director
11 based in Los Angeles, CA that holds a Bachelor of Arts degree in Fine Art from
12 the University of Southern California.
13

14 7. Plaintiff discovers sexuality, portraits, sex work, and obsessions of
15 performance artists (see <https://elizabethwaterman.com/>). Her style has been
16 depicted as mutually transformative and transcendent.
17

18 8. Plaintiff’s photographic work has been featured in performances at
19 the Wallplay (NYC), old Limelight Church/Jue Lan Club (NYC), and Olson-Irwin
20 (Sydney), auctioned on Artnet.com, and exhibited on L’Oeil de La
21 Photographie.com.
22

23 9. Plaintiff also has an extensive editorial and commercial portfolio. Her
24 editorial work has been published in *The British Journal of Photography*, *The Los*
25

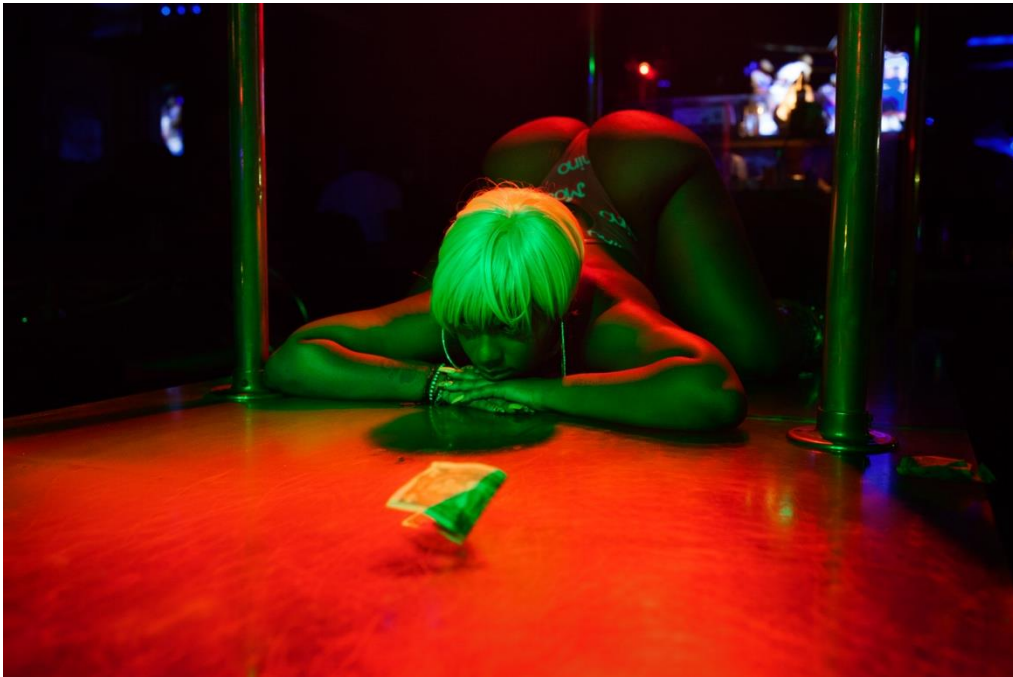
1 *Angeles Times*, and *The Huffington Post*. Plaintiff's commercial clientele includes
2 fashion designers Marc Jacobs and Elie Tahari as well as *MS Magazine*.

3
4 10. Currently, Plaintiff is exhibiting imageries from her 2021 sold-out
5 hardcover, *MONEYGAME*, that features black and white and color photographs
6 from her five-year venture into the sex work and stripper industry, as well as her
7 editorial text.

8 **II. The Work at Issue in this Lawsuit**

9 ***The First Photograph***

10
11 11. In 2018, Plaintiff created a professional photograph of a stripper
12 performing at Club W titled "146_ClubW_August2018_321" (the "First
13 Photograph"). A copy of the First Photograph is displayed below:



1 12. The First Photograph was registered by Plaintiff with the Register of
2 Copyrights on February 25, 2019 and was assigned Registration No. VAu 1-348-
3 543. A true and correct copy of the Certificate of Registration pertaining to the
4 First Photograph is attached hereto as Exhibit “A.”
5

6
7 ***The Second Photograph***

8 13. In 2019, Plaintiff created a professional photograph of a stripper’s
9 legs in white heels standing on money titled “176_CrazyGirls_181-Edit” (the
10 “Second Photograph”). A copy of the Second Photograph is displayed below:
11



23 14. The Second Photograph was registered by Plaintiff with the Register
24 of Copyrights on July 30, 2019 and was assigned Registration No. VA 1-366-084.
25

1 A true and correct copy of the Certificate of Registration pertaining to the Work is
2 attached hereto as **Exhibit “B.”**

3
4 15. The First Photograph and Second Photograph are collectively referred
5 to herein as the “Work.”

6
7 16. Plaintiff is the owner of the Work and has remained the owner at all
8 times material hereto.

9
10 **II. Defendant’s Unlawful Activities**

11 17. Defendant is an online social media company focused on short-form
12 video hosting services.

13 18. Defendant hosts user-submitted videos through its social media app
14 (e.g., <https://apps.apple.com/us/app/tiktok/id835599320>) and website
15 (<https://www.tiktok.com/>).

16
17 19. On multiple dates after each photograph comprising the Work was
18 registered, one or more of Defendant’s users caused each photograph comprising
19 the Work to be displayed/published on Defendant’s social media app/website
20 platform.

21
22 20. A true and correct copy of screenshots of Defendant’s website,
23 displaying the copyrighted Work, is attached hereto as **Exhibit “C.”**

24 21. Following discovery of the photographs comprising the Work on
25 Defendant’s website/social media app, Plaintiff fully complied with 17 U.S.C. §

1 512 by sending multiple Digital Millennium Copyright Act (the “DMCA”)
2 takedown notices to Defendant through its designated agent.

3
4 22. Notwithstanding Plaintiff’s multiple attempts (over a period of
5 months) to get Defendant to take down the unauthorized use of the Work,
6 Defendant failed and/or refused to remove the Work from its website/social media
7 app.

8
9 23. All conditions precedent to this action have been performed or have
10 been waived.

11 **COUNT I – VICARIOUS COPYRIGHT INFRINGEMENT**

12
13 24. Plaintiff re-alleges and incorporates paragraphs 1 through 23 as set
14 forth above.

15 25. Each photograph comprising the Work is an original work of
16 authorship, embodying copyrightable subject matter, that is subject to the full
17 protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).
18

19 26. Plaintiff owns a valid copyright in each photograph comprising the
20 Work, having registered the Work with the Register of Copyrights and owning
21 sufficient rights, title, and interest to such copyright to afford Plaintiff standing to
22 bring this lawsuit and assert the claim(s) herein.
23

24 27. As a result of Plaintiff’s reproduction, distribution, and public display
25 of the Work, one or more of Defendant’s users had access to the Work prior to its

1 own reproduction, distribution, and public display of the Work on Defendant's
2 application/website platform.

3 28. Such user(s) reproduced, distributed, and publicly displayed the Work
4 without authorization from Plaintiff.

5 29. By its actions, such user(s) infringed and violated Plaintiff's exclusive
6 rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing,
7 distributing, and publicly displaying the Work for its own commercial purposes.
8

9 30. The Ninth Circuit has explained that one "infringes vicariously by
10 profiting from direct infringement while declining to exercise a right to stop or
11 limit it." Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1173 (9th Cir.
12 2007). The plaintiff must establish that the defendant exercises the requisite
13 control over the direct infringer and that the defendant derives a direct financial
14 benefit from the direct infringement. Id. A defendant exercises control over a
15 direct infringer when he has both a legal right to stop or limit the directly
16 infringing conduct, as well as the practical ability to do so. BackGrid USA, Inc.
17 v. Twitter, Inc., No. CV 22-9462-DMG (ADSx), 2024 U.S. Dist. LEXIS 103090,
18 *13 (C.D. Cal. June 7, 2024) (denying a Motion to Dismiss claims for direct,
19 contributory, and vicarious infringement). The Ninth Circuit has found that it is
20 sufficient to allege that the defendant had the ability to identify and remove the
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1 infringing work. See Stross v. Zillow Inc., No. 2:21-cv-01489-RAJ-BAT, 2022
2 U.S. Dist. LEXIS 147735, *21 (W.D. Wash. June 21, 2022) (“[I]t is sufficiently
3 alleged that Zillow had the technical ability to screen or identify the Works based
4 on the URLs included in the DMCA Takedown Notice”).

5
6 31. Here, Plaintiff sent Defendant multiple DMCA takedown notices that
7 fully complied with 17 U.S.C. § 512. Specifically, the DMCA takedown notices
8 set forth each of the required elements of 17 U.S.C. § 512(c)(3)(A)(i) – (vi),
9 including an electronic signature of Plaintiff, identification of each photograph at
10 issue, identification of the material claimed to be infringed (and providing a
11 specific URL to the infringing material), information reasonably sufficient to
12 permit Defendant to contact Plaintiff (her address, telephone number, and e-mail
13 address), a statement that Plaintiff had a good faith belief that use of the material
14 on Defendant’s platform was not authorized by Plaintiff, and a statement that the
15 information in the notification was accurate and, under penalty of perjury, that
16 Plaintiff had an exclusive right being infringed.

17
18 32. Plaintiff submitted such infringement notices via Defendant’s own
19 website (<https://www.tiktok.com/legal/report/Copyright>) that Defendant
20 established for submission of DMCA-related claims. Plaintiff likewise submitted
21 the notices to Defendant via e-mail (Copyright@tiktok.com) to Defendant’s

22
23 DMCA designated agent (see
24
25

1 [https://dmca.copyright.gov/dmca/publish/history.html?search=tiktok&id=865aa3](https://dmca.copyright.gov/dmca/publish/history.html?search=tiktok&id=865aa3b9cfc92633fac4f1457decfdcf)
2 [b9cfc92633fac4f1457decfdcf](https://dmca.copyright.gov/dmca/publish/history.html?search=tiktok&id=865aa3b9cfc92633fac4f1457decfdcf)) as an extra means of notifying Defendant.

3
4 33. Defendant has the right to stop or limit infringement on its
5 application/website platform. Indeed, Defendant publishes its policies with
6 respect to infringement on its application/website platform (at
7 <https://support.tiktok.com/en/safety-hc/account-and-user-safety/copyright>),
8
9 noting that Defendant has adopted a policy of terminating user accounts if found
10 to be repeated infringers.
11

12 34. Of note, Defendant provides users with instructions on how to report
13 intellectual property infringement and what information will be required to do so.
14 Moreover, Defendant provides different ways to report infringements (in-app
15 reporting and submission of an online form via the website).
16

17
18 35. Defendant received a direct financial benefit from its user(s)'
19 infringement of the Work. The unauthorized use/display of the Work on
20 Defendant's platform (mobile phone application and website) acted as a draw for
21 other customers/end-users to engage with Defendant. Defendant materially
22 benefited from the increased engagement. The rise in the number of users engaging
23 with Defendant's platform resulted in increased traffic on the above-mentioned
24 platform, leading to advertisements making additional impressions, and yielding
25

1 in-platform purchases. In-platform purchases (e.g., purchases made through the
2 TikTok shop) consequently result in monies being paid to Defendant.

3
4 36. Defendant's vicarious infringement was willful as it acted with actual
5 knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's
6 copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website
7 ("© 2024 TikTok"), indicating that Defendant understands the importance of
8 copyright protection and intellectual property rights and is actually representing
9 that it owns each of the photographs published on its website. See, e.g., Bell v.
10 ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018 U.S. Dist.
11 LEXIS 127717, at *3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of ROI's
12 infringement is evidenced by the fact that at the bottom of the webpage on which
13 the Indianapolis photograph was unlawfully published appeared the following:
14 'Copyright © 2017.' By placing a copyright mark at the bottom of its webpage that
15 contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell asserts ROI
16 willfully infringed his copyright by claiming that it owned the copyright to
17 everything on the webpage."); John Perez Graphics & Design, LLC v. Green Tree
18 Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist. LEXIS 61928,
19 at *12-13 (N.D. Tex. May 1, 2013) ("Once on Defendant's website, Defendant
20 asserted ownership of Plaintiff's Registered Work by including a copyright notice
21 at the bottom of the page. Based on these allegations, the Court finds Plaintiff has
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1 sufficiently pled a willful violation....”).

2 37. Additionally, Defendant is registered under the Digital Millennium
3 Copyright Act (“DMCA”) and thus, Defendant clearly understands that
4 professional photography such as the Work is generally paid for and cannot simply
5 be copied from the internet.
6

7 38. Plaintiff has been damaged as a direct and proximate result of
8 Defendant’s infringement.
9

10 39. Plaintiff is entitled to recover her actual damages resulting from
11 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to
12 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a
13 disgorgement of Defendant’s profits from infringement of the Work, which
14 amounts shall be proven at trial.
15

16 40. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to
17 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed
18 proper by the Court.
19

20 41. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its
21 costs and attorneys’ fees as a result of Defendant’s conduct.
22

23 42. Defendant’s conduct has caused, and any continued infringing
24 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
25 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,

1 Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's
2 exclusive rights under copyright law.

3 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:
4

- 5 a. A declaration that Defendant has infringed Plaintiff's copyrights in the
6 Work;
- 7 b. A declaration that such infringement is willful;
- 8 c. An award of actual damages and disgorgement of profits as the Court deems
9 proper or, at Plaintiff's election, an award of statutory damages for willful
10 infringement up to \$150,000.00 for each photograph comprising the Work;
- 11 d. Awarding Plaintiff her costs and reasonable attorneys' fees pursuant to 17
12 U.S.C. § 505;
- 13 e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
14 amounts;
- 15 f. Permanently enjoining Defendant, its employees, agents, officers, directors,
16 attorneys, successors, affiliates, subsidiaries and assigns, and all those in
17 active concert and participation with Defendant, from directly or indirectly
18 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,
19 reproduce, or otherwise market any works derived or copied from the Work
20 or to participate or assist in any such activity; and
- 21 g. For such other relief as the Court deems just and proper.
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COUNT II – CONTRIBUTORY COPYRIGHT INFRINGEMENT

43. Plaintiff re-alleges and incorporates paragraphs 1 through 23 as set forth above.

44. Each photograph comprising the Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

45. Plaintiff owns a valid copyright in each photograph comprising the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

46. As a result of Plaintiff's reproduction, distribution, and public display of the Work, one or more of Defendant's users had access to the Work prior to its own reproduction, distribution, and public display of the Work on Defendant's application/website platform.

47. Such user(s) reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

48. By its actions, such user(s) infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501.

1 49. One who, with knowledge of the infringing activity, induces, causes
2 or materially contributes to the infringing conduct of another may be liable as a
3 contributory infringer. See Ellison v. Robertson, 357 F.3d 1072, 1076. In other
4 words, a party may be held liable for contributory infringement if it "(1) has
5 knowledge of another's infringement and (2) either (a) materially contributes to
6 or (b) induces that infringement. BackGrid at *9 (C.D. Cal. June 7, 2024). A
7 defendant who receives a compliant DMCA notice and fails to comply satisfies
8 the knowledge prong. Id.

9
10
11
12 50. Here, Plaintiff sent Defendant multiple DMCA takedown notices that
13 fully complied with 17 U.S.C. § 512. The information provided by Plaintiff was
14 sufficient for Defendant to identify the user(s) who infringed the Work.
15 Specifically, the DMCA takedown notices listed the Work infringed, the infringing
16 activity, and the location of the infringing activity on the Defendant's platform.
17 Upon receipt of the DMCA takedown notices, Defendant did in fact become aware
18 of the identity of the user(s) who infringed the Work.
19

20
21 51. Notwithstanding these DMCA takedown notices, Defendant failed to
22 take any action to remove the Work. Defendant therefore had actual knowledge of
23 its user(s)' infringement of the Work.
24
25

1 52. A plaintiff properly alleges the material contribution element if he can
2 show that a defendant could have taken simple measures to prevent further damage
3 to copyrighted works yet continued to provide access to infringing works. Stross
4 v. Meta Platforms, Inc., No. 2:21-cv-08023-MCS-AS, 2022 U.S. Dist. LEXIS
5 100689, *11 (C.D. Cal. Apr. 6, 2022); Umg Recordings, Inc. v. Grande Commc'ns
6 Networks, L.L.C., No. 23-50162, 2024 U.S. App. LEXIS 25505, at *56 (5th Cir.
7 Oct. 9, 2024) (affirming jury verdict of contributory infringement against ISP that
8 received DMCA notices with respect to the IP addresses of its infringing users but
9 failed to take any action to suspend and/or remove services to those users).

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14 53. Defendant could have taken simple measures to prevent further
15 damage to copyrighted works yet continued to provide access to infringing works.
16 Defendant received multiple, fully compliant DMCA takedown notices yet took
17 no action to remove the infringing material from its application/website platform.

18
19 54. Defendant is a multinational corporation with in-house legal staff.
20 Defendant easily could have dedicated sufficient resources to monitoring DMCA
21 takedown notices and taking timely action to remove infringing conduct, yet
22 Defendant took no such simple measures.
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24
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1 55. Defendant’s contributory infringement was willful as it acted with
2 actual knowledge or reckless disregard for whether its conduct infringed upon
3 Plaintiff’s copyright. Notably, Defendant itself utilizes a copyright disclaimer on
4 its website (“Copyright © 2024 Tik Tok”), indicating that Defendant understands
5 the importance of copyright protection and intellectual property rights and is
6 actually representing that it owns each of the photographs published on its website.
7
8 See, e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP,
9 2018 U.S. Dist. LEXIS 127717, at *3 (S.D. Ind. July 31, 2018) (“[T]he willfulness
10 of ROI’s infringement is evidenced by the fact that at the bottom of the webpage
11 on which the Indianapolis photograph was unlawfully published appeared the
12 following: ‘Copyright © 2017.’ By placing a copyright mark at the bottom of its
13 webpage that contained Mr. Bell’s copyrighted Indianapolis Photograph, Mr. Bell
14 asserts ROI willfully infringed his copyright by claiming that it owned the
15 copyright to everything on the webpage.”); John Perez Graphics & Design, LLC
16 v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist.
17 LEXIS 61928, at *12-13 (N.D. Tex. May 1, 2013) (“Once on Defendant’s website,
18 Defendant asserted ownership of Plaintiff’s Registered Work by including a
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1 copyright notice at the bottom of the page. Based on these allegations, the Court
2 finds Plaintiff has sufficiently pled a willful violation....”).

3
4 56. Additionally, Defendant is registered under the Digital Millennium
5 Copyright Act (“DMCA”) and thus, Defendant clearly understands that
6 professional photography such as the Work is generally paid for and cannot simply
7 be copied from the internet.
8

9
10 57. Plaintiff has been damaged as a direct and proximate result of
11 Defendant’s contributory infringement.

12
13 58. Plaintiff is entitled to recover her actual damages resulting from
14 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to
15 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a
16 disgorgement of Defendant’s profits from infringement of the Work, which
17 amounts shall be proven at trial.
18

19
20 59. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to
21 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed
22 proper by the Court.

23
24 60. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover her
25 costs and attorneys’ fees as a result of Defendant’s conduct.

1 61. Defendant's conduct has caused, and any continued infringing
2 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
3 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
4 Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's
5 exclusive rights under copyright law.
6
7

8 **WHEREFORE,** Plaintiff demands judgment against Defendant as follows:

- 9 a. A declaration that Defendant has vicariously infringed Plaintiff's copyrights
10 in the Work;
11
12 b. A declaration that such contributory infringement is willful;
13
14 c. An award of actual damages and disgorgement of profits as the Court deems
15 proper or, at Plaintiff's election, an award of statutory damages for each
16 photograph comprising the Work;
17
18 d. Awarding Plaintiff her costs and reasonable attorneys' fees pursuant to 17
19 U.S.C. § 505;
20
21 e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
22 amounts;
23
24 f. Permanently enjoining Defendant, its employees, agents, officers, directors,
25 attorneys, successors, affiliates, subsidiaries and assigns, and all those in

1 active concert and participation with Defendant, from directly or indirectly
2 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,
3 reproduce, or otherwise market any works derived or copied from the Work
4 or to participate or assist in any such activity; and
5

6
7 g. For such other relief as the Court deems just and proper.
8

9 Dated: November 20, 2024.

COPYCAT LEGAL PLLC

10 By: /s/ Lauren Hausman
11 Lauren Hausman, Esq.
12 Jonathan Alejandrino, Esq.
13 Attorneys for Plaintiff
14 Elizabeth Waterman
15
16
17

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on November 20, 2024, I electronically filed the
20 foregoing document with the Clerk of the Court using CM/ECF, which will
21 electronically serve all counsel of record.
22

23 /s/ Lauren M. Hausman
24 Lauren M. Hausman, Esq.
25